IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.09.2007

Coram:

The Honourable Mr. Justice V. DHANAPALAN

W.P. No.26667 of 2007 & M.P. Nos.1,2 and 3 of 2007

Sri Vaithiyanathan Construction
represented by its Partner
A. Kalaiyazhagan
1/3 Middle Street
Memalur, Tirukoilur Taluk - 605 751
Villupuram District — Petitioner

vs.

The Block Development Officer
(Village Panchayat)
Tiruvennainallur Panchayat Union
Villupuram District — Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner — Mr. N.G.R. Prasad for Mr. S. Saravanakumar

For 1st respondent — Mr. A. Edwin Prabakar, Addl. Govt. Pleader

For proposed impleading respondents — Mr. R.Shanmuga Sundaram, Senior Counsel for Mr. K. Azhagu Raman

ORDER

This writ petition has been filed seeking a writ of certiorarified mandamus calling for the records in respect of tender notification issued by the respondent in his proceedings in Na.Ka. A1/1326/07 dated 26.07.2007 and quash the tender process pursuance to the above said tender notification and consequently, direct the respondent to call for afresh and conduct a fresh tender and proceed in accordance with law and the provisions of the Tamil Nadu Transparency in Tenders Act, 1998.

2. The petitioner's case in brief, as culled out from the affidavit, runs as under:

a. The petitioner was registered as a Class I contractor with the respondent vide the proceedings of the District Collector, Villupuram dated 16.01.2006 and subsequently, its registration was renewed which is valid till 31.03.2008. While so, the respondent issued a Tender Notification in Ref.No. Na.Ka.A1/1326/07 dated 26.07.2007 and the procedure for getting tender schedule is that the respondent has to give challan to deposit the initial amount for

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getting schedule of tender and after deposit of the challan amount, the respondent has to give the schedule to the registered contractors, the last date for which is 06.08.2007 and the last date for opening of the tender is at 4.00 p.m. on 07.08.2007.

b. On 06.08.2007, when the petitioner entered the office of the respondent, the ruling party members, with the help of rowdy elements, prevented and assaulted the petitioner and other contractors and further, the respondent in collusion with the ruling party M.L.A., even refused to entertain the petitioner inside the office premises. In respect of assault on the petitioner and other contractors, a criminal complaint was lodged before the Thiruvennainallur Police Station at Villupuram District and in this incident, the local M.L.A. also had sustained grievous injuries. Though the petitioner had applied with the necessary prescribed fee, the respondent refused even to supply the tender documents in violation of Section 9(4) of the Tamil Nadu Transparency in Tenders Act, 1998, (in short "the Act") according to which the respondent is obligated to supply the tender documents to every intending tenderer who has applied for such a document and because of the wilful contravention of Section 9(4) of the Act by the respondent, the present writ petition.

3. The first respondent has filed counter contending that:

a. the petitioner is one of the 25 registered contractors in Tiruvennainallur Panchayat Union (in short "the Panchayat Union") and the tender notification was for the execution of works in Village Panchayats selected under AGAMT 2007-2008 in ROC No.B1/1326/2007 dated 26.07.2007 in a transparent manner as per the rules laid down in Tamil Nadu Panchayats Rules, 1998, vide G.O.286 RD (CSS-I) Dept. dated 31.12.1998 and the tender notice was sent to all the 25 registered contractors of the Panchayat Union which the petitioner himself has concurred in the affidavit by stating that he had attended the Panchayat Union office on 06.08.2007 which is the last date for getting tender schedule;

b. proper arrangements were made for issuance of tender schedule to all concerned on 06.08.2007 by engaging the Extension Officer (RLEGP) and the Deputy Block Development Officer of the Panchayat Union Office and police were informed of the tender well in advance on 03.08.2007 and however, no police personnel turned up for security on the eventful day and unexpectedly, some unidentifiable miscreants entered the premises of the Panchayat Union Office at about 1.48 p.m. on 06.08.2007 and there was utter chaos and the miscreants went on rampage by demolishing the Office Sumo TN 09 G 0829 and the office of the Chairperson and immediately, the police were informed of the untoward incidents and then, they resorted to action and the tender schedules were issued to the contractors at 2.30 p.m. and a complaint was immediately lodged with the Inspector of Police, Tiruvennainallur Police Station on 06.08.2007 to take action against the miscreants who had caused the chaos;

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c. there was no flaw in the procedure in the tender schedules and transparency was maintained in the issue of tender schedules by the respondent as per the Act and the petitioner has tried to mislead this Court by taking advantage of the untoward incidents that occurred and has tried to defame the respondent by stating that the respondent, by colluding with the ruling party MLA, refused to entertain the petitioner into the office premises which only portrays that the petitioner lacks conviction and is intentionally putting the blames on the respondent and tries to victimise the respondent out of political rivalries among the contractors;

d. the respondent has acted well within the capacity of the tender authority or Commissioner and has maintained absolute transparency in the issue of tender schedules and the petitioner had not approached the tender schedule authority for schedules on 06.08.2007 for the reasons only known to him and as scheduled, on 07.08.2007 at 4.00 p.m., the tender was finalised and opened with the participation of 15 contractors out of 25 contractors and since the sealed tenders were opened, there is no question of issuing tender schedule to the petitioner and the petitioner has not made out a case for interference by this court and hence, this petition is unsustainable and is liable to be dismissed as it has been filed by abusing the process of law and particularly, when there is no prima facie made out;

e. the petitioner's prayer has no grounds and his malicious act is intended only to defame the respondent with ulterior motives as he could not find any flaw in the procedures adopted by the respondent;

f. since this Court granted interim order of not to confirm the tender in M.P. No.1 of 2007, the respondent has not confirmed the tender so far and the tender process has come to a grinding halt and the entire works under the tender worth more than Rs.1,20,00,000/- under 102 headings are not able to be allotted and the public are suffering enormously; and

g. since the petitioner has not participated in the tender, the balance of convenience is in favour of the respondent and the interim order has to be vacated and the writ petition dismissed.

4. The petitioners in the impleading petition seeking to implead themselves as respondents 2 to 5 in the writ petition are some of the registered contractors in the Panchayat Union and according to them:

a. the tender notification was issued by the respondent for execution of certain works in the Panchayat Union and arrangements were made by the respondent for the issue of tender schedules to all interested persons from 26.07.2007 to 06.08.2007;

b. on 06.08.2007, at about 1.50 p.m., the petitioner, along with some rowdy elements numbering over 100 persons, entered the premises of the Panchayat Union Office and criminally intimidated the

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officials there and attempted to restrain the issue of tender schedules;

c. the said incident of rioting and intimidation took place totally under the influence of Kumaraguru, M.L.A., Thirunavaloor Constituency from AIADMK party; the petitioner is the brother-in-law of the said Kumaraguru; the impleading respondents and the other contractors who had assembled there with the challans and for submitting tender schedules objected to their riotous behaviour; the petitioner was not at all present in the scene and it was only Kumaraguru, MLA and his men who were present and indulging in rioting and attacking the contractors and others including the office staff;

d. though the petitioner is a registered contractor, he was not at all interested in participating by submitting his tender in respect of any of the works as stipulated in tender publication and has not received any challan to deposit the initial amount for getting the tender schedule; if he were really interested in getting the tender schedule, he would have very well, in advance, made the deposit for the challan for obtaining tender documents and approached the respondent's office and he would not have waited till the last moment for receiving the tender schedule and thus, it is clear that the petitioner's intention is to scrap the entire procedure in order to make the other contractors incur loss;

e. this writ petition has been filed at the instigation of Kumaraguru, M.L.A. of A.I.A.D.M.K. Party of the Thirunavaloor Constituency who is none other than the petitioner's brother in law;

f. it is the petitioner's intention to extract money from the other contractors since all of them refused to pay the protection money and when it did not materialise, the petitioner created problem on 06.08.2007 and thereafter, he has approached this Court with false averments and allegations against the respondent and the averments and allegations are false as he was not present anywhere near the office of the respondent and was neither a complainant nor an accused in any one of the four FIRs filed in this case; and

g. the work under the entire tender schedule is worth about more than a crore of rupees and the impleading respondents have already paid a sum of Rs.1,36,750/- towards deposit and a sum of Rs.81,840/- towards charges for challan for various works and therefore, their rights have to be protected and any action towards re-tender will defeat their rights as they have already made the deposits and they will be deprived of their money in the event of re-tendering and they have to forfeit the entire Earnest Money Deposit as well as lakhs of rupees as paid by them and the petitioner's action is an abuse of process of the Court without obtaining forms and participating in the tender process and as such, the interim order has to be vacated.

5. A reply affidavit has also been filed by the petitioner contending that:

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a. once the challan amount is paid, the approved contractors are entitled to the schedule for submission of contract and when the respondent himself admits that there was commotion and untoward incident on 06.08.2007, it goes without saying that the respondent should cancel the tender and conduct a fresh tender as already done on two previous occasions, viz., on 29.06.2007 and 21.07.2007;

b. he could not participate in the tender since he was prevented by the ruling party members from entering the Panchayat Union office and he has no other option except to bring this incident to the notice of this Court;

c. as far as the impleading respondents are concerned, no right has accured for them since the respondent is yet to confirm the tender and moreover, the impleading respondents are strong supporters of the ruling party and K. Nadanasigamani is the brother of an Hon'ble Minister of the ruling party who has been awarded contract worth Rs.30 lakhs even though the money limit of subsisting contracts is Rs.10 lacs; in respect of Krishnaveni and Navalan, the money limit has been exceeded and they have been awarded contracts worth Rs. 50 lakhs each; and

d. the petitioner, along with other persons, did not enter the Panchayat Union office and criminally intimidate the officials there as alleged by the impleading respondents and it is also not correct to state that the untoward incident took place at the behest of the Thirunavaloor MLA and in fact, the said person sustained injuries due to the commotion created by the ruling party members as per the newspapers reports and since the ruling party members prevented the petitioner and other contractors, they have been denied the opportunity of participating in the tender.

6. Heard Mr. N.G.R. Prasad, learned counsel for the petitioner, Mr. A. Edwin Prabakar, learned Additional Government Pleader for the respondent, Mr. R. Shanmugasundaram, learned counsel for the impleading respondents 2 to 5.

7. The learned counsel for the petitioner has submitted that the respondent has refused to supply the tender documents though the petitioner has applied with the necessary prescribed fee and it is a clear case of arbitrary exercise of power and selective discrimination of participants to the benefit of certain individuals and therefore, the action of the respondent is a clear case of malafideness in administrative action and in violation of the Section 9(4) of the Act and it is against the principles of natural justice and fair distribution of State large.

8. He has particularly argued on paragraph 4 of the counter indicating that unexpectedly some unidentifiable miscreants entered the premises of the Panchayat Union Office at about 1.48 p.m. on 06.08.2007 and there was utter chaos and the miscreants went on rampage by demolishing the office Sumo and the office of the Chairperson and there was a complaint lodged with the Inspector of Police and therefore, the situation was not proper and the tender forms were not issued to the petitioner.

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9. The learned counsel for the petitioner has further contended that it is not correct to say that the petitioner, along with 100 persons, entered the office of the respondent and criminally intimidated the officials there and it is only the M.L.A. of the ruling party who has prevented the petitioner from participating in the tender process, thereby depriving the petitioner of the fundamental right guaranteed under the Constitution of India. It is also his contention that the respondent had knowingly and wilfully contravened the provisions of the Act and unless this Court comes to the rescue of the petitioner, the respondent will succeed in his attempt to pick and choose the participants and deny the petitioner the right at the level of entry itself and therefore, the tender process has to be recalled and re-tender ordered. He has further contended that the local M.L.A., with the help of rowdy elements, has assaulted the petitioner and other contractors in which a criminal complaint was lodged before the Tiruvennainallur Police Station at Villupuram and further, at the instance of the local M.L.A. and the ruling party members, the respondent even refused to entertain the petitioner inside the Panchayat Union office.

10. In support of his contention, the learned counsel for the petitioner has relied on a judgment of this Court reported in (2004) 4 MLJ 523 in the matter of M. Saravanachelvam vs. The Commissioner, R.S. Mangalam Panchayat Union, R.S. Mangalam, Ramnad District and others and the relevant paragraphs read as under:

> "4 According to the petitioner, after remitting the cost, he approached the first respondent for the grant of tender schedule. The first respondent had stated that the tender schedules were not ready and that it would be ready at 4.00 p.m. which the petitioner can collect at 4.00 p.m. However, even at 4.00 p.m., the tender schedules were not issued. The petitioner alleges that about 300 persons belonging to the third respondent came to the Panchayat Union office along with his son, mobbed the Panchayat Union office and prevented the first respondent from issuing the tender schedule. The second respondent was colluding with the third respondent and did not issue the tender schedule.
>
> 23 The facts of this case, disclose a dismal pattern of conduct which is being brought to the notice of this Court frequently, namely, that not even tender documents are issued to all eligible contractors and that the supply of the documents is restricted only to a favoured syndicate or individuals. Some of the officials and non-officials who wield the power at various levels and involved in the process of tender, appear to think that they are above the law and even after the matters are brought to the notice of the High Court, appear to adopt tactics even to render orders of Court ineffective by total disregard even to the process of Court. Even after the passing of the legislation under the Tamil Nadu Transparency of Tenders Act, 1998, the grant of many of the tenders, small or big, do not conform to the provisions of the said Act and Regulations. A citizen has to come before this Court even to obtain tender documents and even after orders are issued, auction is deliberately postponed and different methodology is adopted to

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deny the benefits of the order. Not only the contention that the petitioner went away after paying the initial amount and that he did not return till 5.45 p.m. sounds very artificial and improbable, but is also belied by the subsequent conduct of the respondents, as dealt with above, inclusive of filing of false affidavits regarding the telegram sent by the petitioner.

24 In fact, this Court, on earlier occasions, in similar cases, had directed the Government to ensure that the officials in the lower level do not indulge in such high-handed practice of even refusing to give the tender documents to the eligible contractors. Even though there is a general instruction to the effect that any contractor, if he chooses to receive the tender document by post or courier, that also should be complied with subject to the contractor making the additional payment, as required, the same state of affairs continue.

25 I am, therefore, fully convinced that the overall facts stated in the affidavit resulting in unfair denial of tender documents to the petition is amply established. The first respondent, whether by himself, for his own reasons or at the behest of someone, had acted in a clandestine manner in disregard to his duties and also with an intention to deny the petitioner not only his lawful rights but also to circumvent the orders of this Court. Cancellation of the first item of work is contrary to the specific orders of this Court. The conduct of the Commissioner, namely, whoever was the individual discharging his duties at the relevant period, is highly improper. The first counter affidavit had been filed by one Dorairaj and the additional counter affidavit had been filed by P.V. Muthuramalingam. Dorairaj has been impleaded by name in the writ petition. It is made clear that whoever was the official functioning as the Commissioner at the relevant point of time, is answerable and if he is not willing to speak the truth, namely, at whose behest he was acting, he has to reap the consequences. Any directions against him should have deterring effect and a warning to such officials who feel that extraneous factors are more important than rule of law."

11. The learned Additional Government Pleader for the respondent has contended that the respondent has acted well within his capacity and in accordance with the provisions of the Act and has maintained absolute transparency in the issue of tender schedules and the petitioner has not approached the tender issuing authority on 06.08.2007 for the reasons best known to him.

12. He has further contended that on 07.08.2007, at about 4 p.m., the tender was finalised and opened with the participation of 15 contractors out of 25 contractors and since sealed tenders have been opened, the question of issuing tender schedule to the petitioner does not arise and the petitioner has not made out a case for any interference by this Court. It is his further contention that the respondent has adopted the procedure contemplated in the Act and has maintained transparency in the issue of

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tender schedules and any interference at this stage will only prejudice the larger public interest and the tender works worth about Rs.1.20 crores under 102 headings are not able to be allotted and the public are suffering enormously.

13. On the other hand, the learned Senior Counsel appearing for the impleading respondents has contended that the petitioner, along with rowdy elements numbering about 100 persons, entered the Panchayat Union Office and criminally intimidated the officials there and attempted to restrain the issue of tender schedules and this incident of rioting and intimidation took place totally under the influence of the M.L.A. of the Thirunavaloor Constituency from AIADMK party who is also the District Secretary of the party and the petitioner is the brother-in-law of the said M.L.A. It is also his contention that the impleading respondents and other contractors who had assembled there with the challans and for submitting tender schedules objected to their riotous behaviour of the petitioner and other rowdy elements.

14. The learned Senior Counsel has denied the allegations and averments of the petitioner and submitted that the tender is worth about more than a crore of rupees and the impleading respondents have paid huge amount towards deposit and other charges and the tender has already been opened and in the event of a re-tender, the impleading respondents will be put to irreparable loss and hardship and the petitioner has, in fact, not at all participated in the tender process and he has no right to seek an order for a re-tender.

15. I have considered the submissions made by the learned counsel for the parties.

16. Admittedly, the respondent had issued a tender notification dated 26.07.2007 for execution of certain works in the Panchayat Union and the tender notification had been sent to 25 registered contractors including the petitioner. It appears that the entire work under the tender is worth more than Rs.1.20 crores under 102 headings. It is also not in dispute that the last date for issue of tender documents is 6th August 2007.

17. According to Section 9(4) of the Act, the Tender Inviting Authority shall supply the schedule of rates and tender documents in such manner and in such places as may be prescribed to every intending tenderer who has applied for such document. In the case on hand, it is seen that as per the rules, arrangements for issuing tender schedules to all concerned were made on 06.08.2007 by engaging the Extension Officer (RLEGP) and the Deputy Block Development Officer at the Panchayat Union office and the police were informed of the tender well in advance on 03.08.2007; but no police personnel had turned up for security on that day. It is also seen that some miscreants entered the premises of the Panchayat Union office and there was utter chaos and there was also an untoward incident which is admitted by the respondent in paragraph of his counter. Since paragraph 4 of the counter is more relevant for consideration, the same is extracted as under:

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"It is further submitted that the respondent had properly arranged for the issue of tender schedules to all concerned on 06.08.2007 by engaging the Extension Officer (RLEGP) and the Deputy Block Development Officer of Tiruvennainallur Panchayat Union Office and the police were informed of the tender well in advance on 03.08.207 and however and no police personnel turned up for the security on the eventful day. Unexpectedly some unidentifiable miscreants entered the premises of the Tiruvennainallur Panchayat Union Office at about 1.48 PM on 06.08.2007 and there was utter chaos and the miscreants went on rampage by demolishing the Office Sumo TN 09-G-0829 and the Office of the Chairperson and immediately the police were informed of the untoward incidents and then they resorted to action and the tender schedules were issued the Contractors at 2.30 p.m. and a complaint was immediately lodged to the Inspector of Police, Tiruvennainallur, P.S. On 06.08.2007 to take action the miscreants who had caused the chaos."

18. From a reading of the above statement of the respondent, it is clear that there was a chaos and confusion on 06.08.2007 from 1.48 p.m. onwards and in the process, some miscreants had entered the respondent's premises and chaos was created on the last day of issuance of tender forms by the respondent. It is also seen from the averments in the petitioner's affidavit as well as contesting respondent that there were political reasons and the presence of some miscreants has created certain chaos. This Court is not inclined to go into the merits of these issues and is concerned only with the question as to whether there was any proper arrangement made by the respondent for issuance of the tender forms.

19. From a perusal of the material records available before this Court, it appears that there was no congenial or peaceful atmosphere on 06.08.2007 only from 1.48 p.m. onwards in the place where arrangements were made for issuance of tender forms. Therefore, the possibility of issuing tender forms even assuming that the petitioner had an intention to apply appears to be doubtful. It is also seen that clause 5 of the terms and conditions of the tender schedule prescribes that there is no acceptance of demand draft in the case of contractor in question. Therefore, whether the petitioner had the intention to take the demand draft form or not is not the question and it is only the procedure, i.e. whether he came before the tender inviting authority for payment and to get challan pursuant to which only he can apply and then receive the tender forms, which has to be considered. In this case, the situation was not conducive to allow the petitioner to come and receive the tender forms. But, it also appears that some contractors have obtained tender forms and their participation was over and it is only because of a rivalry between two groups, the petitioner was not in a position to enter the respondent's premises and as such, he was denied the opportunity of getting tender forms and to participate in the tender process.

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20. The objects and reasons of the Act are very clear that there must be fairness and reasonableness to every person who is eligible to participate in the tender proceedings. It is also to be borne in mind that a single person alone cannot apply for all the items numbering about 102 headings and prevent others from participating. Therefore, if rival groups intend to stall the proceedings, then, the common man who is having eligibility cannot go before the tender inviting authority who is conducting the tender process. Though chaos was created and some miscreants entered the Panchayat Union office on 06.08.2007 at 1.48 p.m., some of the contractors have already got the tender forms and have also applied and in fact, participated in the tender process and the tender has already been opened and now, only the confirmation of tender has been stayed by this Court for a limited period.

21. In an identical circumstance, this Court, in its judgment reported in (2004) 4 MLJ 523 in the case of M. Saravanachelvam vs. The Commissioner, R.S. Mangalam Panchayat Union, R.S. Mangalam, Ramnad District and others, had directed the Government to ensure that the officials in the lower level do not indulge in such a high-handed practice of even refusing to give tender documents to the eligible contractors. Even though there is a general instruction to the effect that any contractor, if he chooses to receive the tender document by post or courier, that also should be complied with subject to the contractor making the additional payment, as required, the same state of affairs continue. Though the respondent has followed the procedure till the time when chaos came into play, he has not acted in the manner known to law subsequent thereto and has not taken any efforts to prevent chaos in order to perform his lawful duties. Of course, this situation is due to the reasons set out above. In this case, the situation was not proper and what steps had he taken to call the police knowing well in advance that he had informed the police as early as on 03.08.2007 itself, much prior to the last date of issuing the tender forms? He has no reason as to why the police personnel were not present on that day. Therefore, this Court has reasons to believe that the Commissioner / tender inviting authority has not acted in the manner known to law as per the provisions of the Act in a transparent way to issue tender forms to the petitioner. That being the case, the tender process cannot be said to have been conducted by the respondent in a fair, reasonable and transparent manner insofar as the petitioner is concerned from 1.48 p.m. onwards on 06.08.2007 and accordingly, the tender process conducted by the respondent after 1.48 p.m. on 06.08.2007 has to be re-called and a re-tender has to be ordered. However, this Court feels that the petitioner alone cannot stall the entire tender process as he has not spelt out in his affidavit in clear terms as to what are the items of work he intends to apply. As such, this Court is not inclined to recall the entire tender process and in that view of the matter, the tender process conducted in a fair and reasonable manner upto 1.48 p.m. on 06.08.2007 need not be interfered with and it has to be kept in tact and it is only the tender process which had taken place after 1.48 p.m. on 06.08.2007 has to be recalled in view of the reason that only thereafter, there was some chaos and confusion due to a rivalry between two groups. It is seen that except the petitioner, no other person has come before this Court alleging that there was a chaos or that

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there is no transparency in the tender process conducted by the respondent. Therefore, since it appears that the petitioner is aggrieved as he was not issued tender forms as per Section 9(4) of the Act and thereby not being allowed to participate in the tender process and since this Court is very much disturbed by the unwarranted and unpleasant situation created by two rival groups in the process of a public tender aimed at implementing a particular scheme/project meant for the people of the society and bearing in mind the fact that the mis-conduct of the two rival groups with a view to stall the tender process should not hamper the better governance and welfare of the society, without interfering with the tender process conducted on 06.08.2007 upto 1.48 p.m. and without going into the vires of the Notification impugned in this writ petition, this Court directs the respondent to issue tender forms to the petitioner in respect of specific items of work in which he intends to participate and thereafter, the respondent shall proceed further in conducting the tender as per the law established from the stage when chaos hampered the tender process and consider the case of the petitioner along with 15 other contractors who have already participated in the tender process, taking note of the fact that the scheme/project to be implemented is of paramount public interest.

In fine, the tender process is interfered with to the extent indicated above and the writ petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

cad

To

The Block Development Officer
(Village Panchayat)
Tiruvennainallur Panchayat Union
Villupuram District
+ 1 CC To Mr. S.Saravana Kumar, Advocate SR NO.58271
+ 1 CC To Mr. A.Edwin Prabhakar, Advocate SR NO. 58258
+ 1 CC To Mr. K.Azhaguraman, Advocate SR NO.58144

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